

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8345 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and

Sd/-

MR.JUSTICE A.R.DAVE Sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

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2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

SHANTAGAURI RAMNIKLAL TRUST

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR BR SHAH for Petitioners

MR RP BHATT for Respondent No. 1, 2

CORAM : MR.JUSTICE R.BALIA. and

MR.JUSTICE A.R.DAVE

Date of decision: 02/11/98

ORAL JUDGEMENT

(Per: R.Balia, J.)

The petitioner has challenged the order dated 26.7.1989 by which the application for registration as a Public Charitable Trust for the purposes of Income Tax Act has been rejected with reference to the provisions of Section 13 (1) (b) of the Income Tax Act, 1961. The Trust has been established for the benefit of 'Brahmakshatriya Community'. By the communication dated 26.7.1989, i.e. the impugned order, the petitioner was informed that the argument that Brahmakshatriya Community is not a religious community or religious caste has not been found correct. Brahmakshatriya Community is a religious community or caste and, therefore, the case of the Trust is hit by the provisions of Section 13 (1) (b) of the Income Tax Act.

2. It is urged by the learned Counsel for the petitioner that, though two dates were fixed for hearing, the Counsel could not remain present before the Commissioner. Written submissions had been made on 27.3.1989 before the decision by the Commissioner which has been referred to in the communication. However, no reasons have been spelt in the communication to hold Brahmakshatriya Community as a religious community. A specific averment has been made in the written submission that the community has come into existence by descent and by marriage, that is to say community is not constituted by followers of any particular religion. This community does not follow any particular religion. Therefore, it cannot be treated as a religious community or religious caste within the meaning of the expression as used in Section 13 (1) (b) of the Income Tax Act. It has also been asserted that members of Brahmakshatriya Community do not have any attachment to any particular religion. It (religion) is the matter of personal volition of each family and there is no compulsion to follow any particular cult, religion or sect. Reference has been made to various customs and traditions prevalent and followed by Brahmakshatriya Community in the matter of marriages and other activities to point out that there is no requirement to have attachment with any particular religion for the purpose of being member of that community. No reason has been given in the order to discard the material placed in the written submission nor any reason whatsoever has been given to christen Brahmakshatriya Community as a religious community inasmuch as there is nothing to suggest as to which particular religion the membership of community is supposed to abide.

3. We find force in this contention that no link or reason appears from the communication that may have been provided by the Commissioner in reaching its conclusion that 'Brahmakshatriya Community is a religious community'. We inquired from the learned Counsel for the Revenue whether any order giving reasons has been made on file inasmuch as Annexure-G dated 26.7.1989 is only a communication at the direction of the Commissioner informing the petitioner of the result of his application. The learned Counsel indicated that the file does not contain any reason except that the noting rejecting the application states that Brahmakshatriya Community is a religious community. Whether a given group of persons identifiable as community or caste constitutes a religious community or not depends on whether the origin or formation of such community is referable to groups of a number of persons, ordinary follower of a religious faith or practice. Merely because accumulation of a group of persons are identifiable by one common name and ordinarily be pursuing a common religion or religious faith will not make it a religious community. Nor there is any presumption that any class of persons, who on account of any historical or geographical reason are identifiable as a community becomes a religious community. Whenever an application is made for registration under Section 12-A, it is for the Commissioner to make an enquiry and reach his conclusion about the nature of community. He cannot reject an application simpliciter on abstract doctrine of burden of proof to be on applicant by presuming the same to be a religious community unless otherwise proved. In order to reach a conclusion whether a community is a religious community, there must be something to show that the community denotes abiding by a particular faith to be considered as a member of that community or its identification is on account of practising or following customs or practises. Merely by adhering to distinct cultural practises in its social interactions may not be sufficient to treat a community a religious community. The question also requires to be considered whether a caste in order to be excluded from the benefit of registration be also a religious caste or a part of a religious community as an identifiable mark. Without any such material, it is not possible to reach a concrete conclusion.

4. While considering application for registration of a trust, the Commissioner must also make clear distinction between requirement of registration and requirement for claiming tax benefit. Latter question falls squarely to be considered by the assessing officer.

Section 12-A neither makes registration of trust as condition precedent for claiming benefit under Section 11, 12 read with Section 13, nor registration obviates enquiry into conditions envisaged under Section 13 by the assessing officer before tax benefit can be allowed. Mere filing of application for registration of the Trust is enough to claim benefit of its income under Section 11 and 12 and jurisdiction to assessing officer to enquire into that claim, which also includes question as to who are the beneficiaries of trust. On other conditions being fulfilled, the exemption must follow whether registration is accorded or not.

5. Moreover, in considering the question whether a community is a religious community or not, enquiry is not that whether members of that community adhere to a common religion or faith but enquiry is what is the purpose of such people coming together. It is the purpose for which the number of individuals come together to form a community will determine the nature of community for its adjective and not the practice followed by individual members. A community without any adjective means a number of individuals organized into a body or society. The purpose for which such organized society comes into existence gives it the colour for its identification. A number of persons coming together for a political purpose may be termed as a political society, a group of individuals coming together in an organized manner for furthering their business interests may be termed as business community, likewise a number of persons coming together for the purpose of practising a religious faith or practice, which has direct relevance to spiritual attainment than temporal purposes, is named as religious community. Thus, the relevant enquiry for determining the question whether a community is a religious community must be whether such collection of people has been organized into a society with a bond of having system of beliefs or doctrine which is regarded as conducive to their spiritual well being. If a collective organisation is for other purposes, the fact that many of such community follows a common faith will not be a ground to hold it as a religious community. In other words, formation of community must have nexus with following a common faith. In this context, the Commissioner must first consider whether name 'Brahmakshatriya' by itself denotes any religion or origin of community has been founded on adherence to any religious faith.

5. Be that as it may, as the order made by the Commissioner is not at all a speaking order and affects rights of the petitioner adversely, the order cannot be

sustained. The order communicated vide Annexure-G dated 26.7.1989 is, therefore, quashed and the respondent Commissioner is directed to decide the application of the petitioner for registration under Section 12-A of the Income Tax Act within a period of eight weeks from today after affording an opportunity of personal hearing to the petitioner for which a date may be fixed. Rule is made absolute accordingly. There will be no order as to costs.

(KMG Thilake)

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